

Notice of Allowability

Application No.

09/989,912

Examiner

Carl H. Layno
11/18/05

Applicant(s)

PENNER ET AL.

Art Unit

3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment of 10/5/05.
2. ☒ The allowed claim(s) is/are 1-14 and 27-42.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

1. Acknowledgment is made of applicant's amendment, which was received by the Office on October 5, 2005.

2. Claims 15-26 are canceled. Claims 39-42 have been added. Claims 1-14 and 27-42 are active.

Drawings

3. In view of applicant's modifications to the language of the claims, the Examiner is withdrawing the 37 CFR 1.83(a) objection, which was made against the drawings in the last Office Action. Consequently, applicant's formal drawings, which were submitted on March 11, 2003, are approved by the Examiner.

Claim Rejections - 35 USC § 112

4. In view of applicant's numerous modifications to the claims, the Examiner is withdrawing the 35 U.S.C 112 1st and 2nd paragraph rejections, which were made against claims 15-38 in the last Office action.

Claim Rejections - 35 USC § 103

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5. Upon further reconsideration of applicant's arguments and amendments to claim 1, the Examiner is withdrawing the 35 U.S.C 103(a) rejection of Chen et al '530 in view of Ohara '954 (both applicant's prior art citations), which was made against this claim in the last Office action.

Allowable Subject Matter

6. Claims 1-14 and 27-42 are allowed.

Reasons for Allowance

7. The following is an examiner's statement of reasons for allowance:

The Examiner could not find reference(s) in the prior art showing or teaching applicant's claimed features of an implant within a patient's body having an acoustic transducer controlled switch for permitting current flow from the implant's energy storage device to the rest of the implant's circuitry. Most prior art references of record, as exemplified by Chen et al '530, teach the use of switches (e.g. Reed switches) in implantable devices for permitting the wireless telemetry of control information, rather than for the activation of a power source. Unable to find applicant's claimed acoustically controlled switch configuration in the prior art, the Examiner deems claims 1-14 and 27-42 to be allowable.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

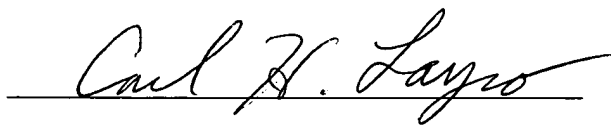
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Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (571) 272-4949. The examiner can normally be reached on 9/4/5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in cursive script, reading "Carl H. Layno", is written over a horizontal line.

CARL LAYNO
PRIMARY EXAMINER

CHL
11/18/2005